

IN THE NATIONAL COMPANY LAW TRIBUNAL

MUMBAI BENCH COURT III

C.P. No. (IB) 880/MB/C-III/2022

Under Section 7 of the Insolvency and Bankruptcy Code, 2016 read with Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016

In the matter of

Metamorphosis Trading LLP

Having office at:

4th Floor, Paville House, Twin Tower Lane, Off Veer Savarkar Marg, Prabhadevi, Mumbai - 400025

...Financial Creditor/Petitioner

Versus

Membrane Filters (India) Private Limited

Having office at:

Gat No. 539/1/3, Klewade, Taluka Bhor, Pune - 412213

...Corporate Debtor/Respondent

Order pronounced on: 07.05.2024

Coram:

Hon'ble Ms. Lakshmi Gurung, Member (Judicial)

Hon'ble Sh. Charanjeet Singh Gulati (Technical)

Appearances:

For the Financial Creditor: Adv. Kacheria

For the Corporate Debtor: Adv. Omkar V Deosthale i/b Regulus
Advocates and Consultants

Per: Ms. Lakshmi Gurung, Member (Judicial)

1. This Petition has been filed by Metamorphosis Trading LLP (“**Petitioner/ Financial Creditor**”) to initiate Corporate Insolvency Resolution Process (“**CIRP**”) against Membrane Filters (India) Private Limited (“**Respondent/Corporate Debtor**”) under **Section 7** of the Insolvency and Bankruptcy Code, 2016 (“**the Code**”) for the alleged default on part of the Corporate Debtor in repayment of debt of **Rs. 3,54,17,724/-** borrowed by the Corporate Debtor from M/s Innoventive Industries Ltd. (**IIL/Original Financial Creditor**).

Brief Facts:

2. It is submitted that IIL was admitted into Corporate Insolvency Resolution Process (**CIRP**) vide order dated 17.01.2017 in CP/01/MB/2016. Subsequently, liquidation proceedings were commenced vide order dated 08.12.2017 in IA/72/2017. The Liquidator, Mr. Dhinal Shah, issued public notice inviting bids for sale of certain claims/transferred assets of M/s Innoventive Industries Ltd. The Applicant was declared as the successful bidder and thereafter, a Deed of Assignment dated 21.07.2021 was executed between the Liquidator and Applicant. The assets acquired by the Applicant in pursuance of the Deed of Assignment includes the financial debt/loan amount of Rs. 3,54,17,724/- payable by M/s Membrane Filters (India) Private Limited (**Corporate Debtor**). Thus, the said amount of Rs. 3,54,17,724/- is now payable to the Applicant by the Corporate Debtor.
3. The Corporate Debtor is a private limited company incorporated on 20.01.2000 in which the promoters of Innoventive Industries Ltd had a 30% shareholding as is evident from the Red Herring Prospectus dated 11.04.2011 issued by IIL which is annexed to the Petition.
4. It is pleaded by the Financial Creditor that as per the Financial Statement of IIL for Financial Year ended 31.03.2017, the said amount

is reflected as “*outstanding balances*” and in the Financial Statement of the Corporate Debtor for the year ended 31.03.2018, it is stated as “*unsecured loans – from others*”.

5. The Applicant, being the assignee of the outstanding amount by virtue of the Deed of Assignment dated 21.07.2021, issued a demand/legal notice dated 16.09.2021 calling upon the Corporate Debtor to repay the said amount of Rs. 3,54,17,724/-. However, the Corporate Debtor, in its reply dated 16.03.2022 denied its liability. Consequently, the Petitioner has filed the present petition.
6. It is submitted that the Liquidator of IIL issued the Process Memorandum on 14.06.2021 and thereafter, the Deed of Assignment was executed between the Liquidator of IIL and the Petitioner on 21.07.2021. In view thereof, the limitation period for filing the captioned petition starts only from 21.07.2021 and therefore, the petition is filed within the limitation period.

Submissions of the Corporate Debtor

7. The Corporate Debtor had filed its Reply dated 29.12.2022 challenging the very existence of financial debt on following grounds:
 - i) The documents relied on by the Petitioner do not serve as evidence that the alleged debt is financial debt under section 5(8) of the I&B Code, 2016.
 - ii) The Corporate Debtor submits that there has been no disbursement of amount from IIL to the Corporate Debtor. The letter of Mr. Chandu Chavan, promoter of IIL, on which the Petitioner relies, clearly states that the amount is a ‘Balance Transfer’.

- iii) The Balance Sheet of the Corporate Debtor relied upon by the Petitioner also has no reference to IIL, the original financial creditor. Therefore, the same also cannot be considered as acknowledgment of debt. The Corporate Debtor denies that the Balance Sheet for FY 2017-18 in any manner confirms the debt in favour of Petitioner/IIL.
 - iv) The Process Memorandum as well as the Deed of Assignment does not prove the debt or its nature as a financial debt.
 - v) In the present case, the default is not established. There is no date of default mentioned. Even the NeSL record annexed to the Petition shows that the debt started on 21.07.2021 and the date of default is 30.07.2021 without any basis. Further, Innoventive Venture Ltd (**IVL**) was a major shareholder of the Corporate Debtor. IVL and ILL were related parties under the same management. In 2018, while the Corporate Debtor was raising funds from SIDBI Trustee Company Ltd in the form of Equity and Debt Infusion, IVL issued a letter to the Corporate Debtor agreeing that the debt payable to IIL is subordinate to SIDBI and in an eventuality, IVL will pay IIL. In view of the same, the Petitioner has a cause of action against IVL and not against the Corporate Debtor. It is further stated that SIDBI even today holds shares in the Corporate Debtor and the debt payable to SIDBI is still pending. All the asset pool is secured in favour of SIDBI towards the same amount. Thus, the alleged debt, if payable by the Corporate Debtor, is subordinated to SIDBI and therefore, there is no default.
8. During various hearings, pointed queries were raised to the Corporate Debtor in response to which the Corporate Debtor filed an additional affidavit which has been taken on record.

FINDINGS

9. Heard Ld. Counsel for the parties and perused the record.
10. From the record, it is ascertained that the original Financial Creditor is M/s Innoventive Industries Limited (**IIL**) who had extended financial assistance to Corporate Debtor in or around 31.03.2016. It is averred that IIL had disbursed Rs. 3,54,17,724/- to Corporate Debtor as “unsecured loan”. No loan agreement or any document with respect to the said disbursement is annexed to the Petition. However, we see that an amount of Rs. 3,54,17,724/- has been acknowledged in the books of the Corporate Debtor as “*unsecured loan – from others*” in Financial Year 2017-2018.
11. The present Financial Creditor/Petitioner was the successful bidder for certain assets of IIL in liquidation process. An Assignment Deed dated 21.07.2021 was executed between the Liquidator of IIL and Petitioner whereby the assets of IIL as listed in the Process Memorandum were transferred to the Petitioner (hereinafter the said assets are referred to as “Transferred Assets”). It is pertinent to note here that the Transferred Assets also included the unsecured loan of Rs. 3,54,17,724/- provided to the Corporate Debtor.
12. Accordingly, the Petitioner had sent a legal/demand notice on 16.09.2021 demanding the payment of the outstanding due within a period of 14 days from the date of receipt of the notice, and also stated that proceedings under I&B Code shall be the consequence of non-payment by the Corporate Debtor.
13. However, the Corporate Debtor, in its reply dated 16.03.2022 to the legal/demand notice, refused to pay the said amount stating that “*it is not true to say that My Client (Corporate Debtor) is liable to pay rupees 3,54,17,724/- to M/s Innoventive Industries Limited as claimed in your notice as the said amount is not due today*”.

14. Consequently, the Petitioner filed the present petition under section 7 of the I&B Code, 2016. The Corporate Debtor has not raised any objection to the assignee's right to pursue this application, but denied its liability to IIL and also raised few other objections:
- i) The heading "unsecured loan" in the Balance sheet (as on 31.03.2018) of the Corporate Debtor does not specifically state that the said loan was taken from IIL.
 - ii) The amount of Rs. 3,54,17,724/- is payable to IIL by Innoventive Venture Limited and not by the Corporate Debtor, hence there is no default.
 - iii) The debt claimed is not a financial debt.
 - iv) The Petition does not mention the date of default.
15. However, during the course of hearing, a pointed query put to the Corporate Debtor about the details of the unsecured loan of Rs. 3,54,17,724/- and direction was given to place on record Ledger Account to explain the nature of entry under "*Unsecured loan – from others*" in the Balance Sheet of the Corporate Debtor dated 31.03.2018. The Corporate Debtor submitted an additional affidavit dated 20.02.2024 clearly stating that the said entry is in respect of unsecured loan received from M/s Innoventive Industries Limited (IIL). The ledger account of IIL in the books of the Corporate Debtor is annexed to the said affidavit showing unsecured loan taken from IIL. Therefore, it is clear that the "*unsecured loan*" of Rs. 3,54,17,724/- as stated in the Balance Sheet for the year ended 31.03.2018 was taken from IIL.
16. The affidavit filed by the Corporate Debtor itself, placing on record the Ledger Account of IIL in the books of Corporate Debtor, completely damages the case of the Corporate Debtor. In the ledger, there is clear admission of debt and acknowledgement thereof as on 31.03.2018. Thus, the first argument of the Corporate Debtor is rejected.

17. The second contention of the Corporate Debtor is that the said amount of Rs. 3,54,17,724/- is payable to IIL by M/s Innoventive Ventures Limited, which is a related party of IIL, and the Corporate Debtor has no obligation to pay the same in view of a letter issued by IVL whereby IVL agreed to pay to IIL the debt payable by Corporate Debtor. To substantiate its submission, the Corporate Debtor annexed a letter dated 10.08.2018 received from Innoventive Venture Limited which is reproduced below:

“Dear Sir,

This is in reference with your letter dated 07th August 2018 for opportunity of funding from SIDBI Venture Capital Ltd – SAMRIDHI FUND for a project in Bihar where you have orders worth 52 Cr. in hand and further orders worth Rs. 35 Cr. are in pipeline.

Pursuant to this you need to increase your share capital in such a way that SIDBI Venture Capital Ltd – SAMRIDHI FUND will hold atleast 30% Equity.

*Please note that we have **NO OBJECTION** to allot and increase the share capital in this regard.”*

18. Nowhere in the above letter, IVL had agreed to take over the liability of the Corporate Debtor to IIL. The Corporate Debtor has failed to place any document on record evidencing the legal transfer of the said liability of Rs. 3,54,17,724/- from the Corporate Debtor to IVL. Thus, in the absence of any such material and also considering the Ledger Account placed on record, we hold that the amount claimed by the Petitioner is payable by the Corporate Debtor.
19. The third argument put forth by the Corporate Debtor is that the debt claimed in the Petition is not a ‘financial debt’ as defined in Section 5(8) of the I&B Code, 2016. It is contended by the Corporate Debtor that the Petitioner has not mentioned the nature of transaction between IIL and Corporate Debtor. However, it is seen that neither the Corporate Debtor, in its reply, had mentioned about the nature of transaction nor has annexed any document to that effect.

20. The Hon'ble Supreme Court in **M/s Orator Marketing Pvt. Ltd. vs. M/s Samtex Desinz Pvt. Ltd. [AIR 2021 SC 4040]** has observed as follows:

“22. ‘Financial debt’ means *outstanding principal due in respect of a loan* and would also include interest thereon, if any interest were payable thereon. *If there is no interest payable on the loan, only the outstanding principal would qualify as a financial debt.* Both NCLAT and NCLT have failed to notice clause(f) of Section 5(8), in terms whereof ‘financial debt’ includes any amount raised under any other transaction, having the commercial effect of borrowing.

31. The definition of ‘Financial Debt’ in Section 5(8) of IBC does not expressly exclude an interest free loan. ‘Financial Debt’ would have to be construed to include interest free loans advanced to finance the business operations of a corporate body.”

(Emphasis Provided)

21. In the financial statement of the Corporate Debtor for the Financial Year 2017-18, the amount given by IIL is shown as “*Non-Current Liabilities: Long Term Borrowings: Unsecured Loans – From Others*”. Clearly, the said loan amount of Rs. 3,54,17,724/- acknowledged in the books of the Corporate Debtor as “Long-term Borrowings” is a loan having commercial effect of borrowing and is therefore, covered under section 5(8) of the I&B Code as financial debt. The Petitioner, being the assignee of the said loan, is entitled to claim it from the Corporate Debtor.
22. Lastly, the Corporate Debtor contended that the neither the Petition nor the NeSL record mentions the date of default. However, we note that, in the Petition, the date of default is mentioned as “23.09.2021” and in the NeSL Record submitted by the Petitioner, the date of default is stated as “30.09.2021”.
23. The Corporate Debtor has failed to repay the amount within 14 days from the date of receipt of demand notice dated 16.09.2021 and thus, default occurred on 30.09.2021 as stated in the NeSL Record. Consequently, the Petitioner has filed the present Petition under section 7 of the I&B Code on 14.07.2022.

24. We have held that there is a financial debt which is clearly acknowledgment in the books of accounts of the Corporate Debtor as on 31.03.2018, and there is default. The date of default has been mentioned as 30.09.2021 as also stated in the NeSL Record.
25. Now, we have to see whether the present Petition has been filed within the limitation period. Considering the exclusion period granted by the Hon'ble Supreme Court in **Re: Cognizance for Extension of limitation registered as Suo-Moto Writ Petition (C) No. 3/2020**, we find that the present Petition is within limitation.
26. It is a well-settled position that the Adjudicating Authority has to determine whether there is debt and default and if it is satisfied that a default has occurred, then the application under section 7 of the Code must be admitted unless it lacks other necessities as mandated thereunder. We are supported by the decision of Hon'ble Supreme Court in **Innoventive Industries Limited vs. ICICI Bank and Anr [(2018) 1 SCC 407]** wherein it was held as follows:

“28. ... The moment the adjudicating authority is satisfied that a default has occurred, the application must be admitted unless it is incomplete, in which case it may give notice to the applicant to rectify the defect within 7 days receipt of a notice from the adjudicating authority.

30. On the other hand, as we have seen, in the case of a corporate debtor who commits a default of a financial debt, the adjudicating authority has merely to see the records of the information utility or other evidence produced by the financial creditor to satisfy itself that a default has occurred. It is of no matter that the debt is disputed so long as the debt is “due” i.e. payable unless interdicted by some law or has not yet become due in the sense that it is payable at some future date. It is only when this is proved to the satisfaction of the adjudicating authority that the adjudicating authority may reject an application and not otherwise.”

(Emphasis Provided)

27. Upon perusal, this Tribunal is of considered opinion that the application made by the Financial Creditor is complete in all respects as mandated under the Code and the default amount is also in excess of the minimum amount stipulated in section 4(1) of the Code. The Petition is filed within the limitation period, and therefore we are satisfied that the present petition is maintainable.
28. In view of the facts and circumstances of the case and discussions hereinabove, the Company Petition bearing no. 880 of 2022 is **admitted** and ordered as follows:

ORDER

- i) The above Company Petition No. (IB) 880 (MB)/2022 is hereby **allowed** and initiation of Corporate Insolvency Resolution Process (CIRP) is ordered against **Membrane Filters (India) Private Limited**.
- ii) The Petitioner has proposed the name of **Mr. Jitendra Palande**, Registration No. IBBI/IPA-003/IP-N00028/2017-2018/10188, to be appointed as an Interim Resolution Professional (IRP) of the Corporate Debtor. The proposed IRP has filed his Written Communication dated 30.06.2022 in Form 2 as required under Rule 9(1) of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016. The Written Communication is accompanied by AFA dated 12.05.2017. Accordingly, **we appoint Mr. Jitendra Palande (jrpalande@gmail.com) as the Interim Resolution Professional (IRP)** to carry out the functions as per the Insolvency & Bankruptcy Code, 2016.
- iii) The Financial Creditor shall deposit an amount of Rs. 5 Lakhs towards the initial CIRP costs by way of a Demand Draft drawn in favour of the Interim Resolution Professional (IRP) appointed herein, immediately upon communication of this Order. The IRP shall

spend the above amount towards expenses and not towards fee till his fee is decided by the Committee of Creditors.

- iv) There shall be a moratorium under section 14 of the Code prohibiting the following:
- a) the institution of suits or continuation of pending suits or proceedings against the corporate debtor including execution of any judgment, decree or order in any court of law, tribunal, arbitration panel or other authority;
 - b) transferring, encumbering, alienating or disposing of by the corporate debtor any of its assets or any legal right or beneficial interest therein;
 - c) any action to foreclose, recover or enforce any security interest created by the corporate debtor in respect of its property including any action under the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002;
 - d) the recovery of any property by an owner or lessor where such property is occupied by or in the possession of the Corporate Debtor.
- v) The supply of essential goods or services to the Corporate Debtor, if continuing, shall not be terminated or suspended or interrupted during the moratorium period.
- vi) The provisions of sub-section (1) of Section 14 shall not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator.
- vii) The order of moratorium shall have effect from the date of pronouncement of this order till the completion of the Corporate Insolvency Resolution Process or until this Bench approves the Resolution Plan under sub-section (1) of section 31 or passes an

order for Liquidation of Corporate Debtor under section 33, as the case may be.

- viii) The public announcement of the corporate insolvency resolution process shall be made immediately as specified under section 13 of the Code.
- ix) During the CIRP period, the management of the corporate debtor will vest in the IRP/RP in terms of section 17 of the Code. The suspended directors and employees of the corporate debtor shall provide all documents in their possession and furnish every information in their knowledge to the IRP/RP.
- x) The Registry shall send a copy of this order to the Registrar of Companies, Mumbai, for updating the Master Data of the Corporate Debtor.
- xi) The Registry is further directed to communicate this order to the Financial Creditor, the Corporate Debtor and the IRP immediately.
- xii) The Registry is also directed to send a copy of this order to the Insolvency and Bankruptcy Board of India (IBBI) for their record.
- xiii) A certified copy of this order may be issued, if applied for, upon compliance with all requisite formalities.

29. The Company Petition No. 880 of 2022 is accordingly **allowed**.

Sd/-

Charanjeet Singh Gulati
Member (Technical)

Sd/-

Lakshmi Gurung
Member (Judicial)

Uma, LRA